STATE OF MICHIGAN

COURT OF APPEALS

GEOFFREY HARRISON,

Plaintiff-Appellant,

v

GREAT LAKES BEVERAGE COMPANY,

Defendant-Appellee.

UNPUBLISHED
August 31, 1999

No. 205494
Wayne Circuit Court
LC No. 95-523376 CZ

Before: Kelly, P.J., and Jansen and White, JJ.

PER CURIAM.

Plaintiff brought the instant suit alleging wrongful discharge in violation of a just-cause employment contract. The trial court granted summary disposition in favor of defendant finding that plaintiff was an at-will employee.[1] The court further found that even if there was a contract for just-cause employment, there was no question of fact that defendant had just cause to discharge plaintiff. Plaintiff appeals as of right. We affirm.

We agree with the trial court's determination that even if there was just-cause employment, there was no question of fact that defendant had just cause to discharge plaintiff. To determine whether defendant had just cause to discharge plaintiff, we must first determine whether defendant had a rule or policy and whether plaintiff was discharged for violating the policy. *Toussaint, supra,* 408 Mich 623-624. An employer's standard of job performance can be made part of the contract and breach of the employer's uniformly applied rules would be a breach of the contract and cause for discharge. *Id*.

In this case, defendant had a sexual harassment policy within its new employee orientation manual which provided in pertinent part:

> The Great Lakes Beverage Company expects all employees to treat their fellow employees, customers and others with respect. In keeping with this expectation, Great Lakes Beverage Company will not tolerate any form of racial, ethnic, sexual or other harassment.

> Prohibited conduct includes any unwelcome sexual advances, requests for sexual favors or any other verbal or physical conduct of a sexual nature where:
>
> > Such conduct substantially interferes with an employee's work performance or creates an intimidating, hostile or offensive work environment.
>
> Other harassing conduct in the workplace is also prohibited. This can include, but is not limited to: crude or offensive language or jokes of racial, ethnic, sexual, or other nature; verbal abuse of a sexual, ethnic, racial, or other nature. . . .

It is contested whether plaintiff had notice of this policy's existence. The president of the union stated in his affidavit that the union had never received a sexual harassment policy from defendant, nor was he aware of such a policy being given to any of its employees. Plaintiff also testified in his deposition that he did not know about the sexual harassment policy, but that he understood that it would be a violation of the company rules or policies for him to sexually harass company customers or clients. Thus, according to plaintiff's own testimony, he knew that sexual harassment of clients or customers was a violation of company policy. Moreover, in the 1991 letter of reprimand, plaintiff was warned that future acts of sexual harassment could result in discharge. The 1991 letter stated in pertinent part:

> For your above described actions you are hereby warned and censured that any future acts such as this will result in more severe disciplinary action up to and including discharge. You are further advised that as a driver/salesman and a representative of our company you are to conduct yourself in a professional fashion, and you should not say or do anything while working on your job that will jeopardize the image or relationship with our valued customers.

Based on plaintiff's testimony and the 1991 letter of reprimand that plaintiff admitted receiving, there is no question of fact as to whether defendant had a policy against sexual harassment of customers and whether plaintiff was aware of that policy.

Finally, we must determine whether plaintiff was, in fact, discharged for violating the sexual harassment policy. *Toussaint, supra* at 623-624. Plaintiff testified that he did not know of any other reason for his termination, other than the complaint that a customer brought against him.[2] Plaintiff has failed to set forth any other evidence to suggest that plaintiff was actually fired for another reason, or that the sexual harassment policy was selectively enforced against him.

Plaintiff's claim that his conduct was not sexual harassment is without merit. Plaintiff claims he did not know that the customer found the comments to be offensive and that he was only joking with her. However, plaintiff was reprimanded in 1991 for making comments to a customer that had a sexual connotation. These comments could have been viewed as sexual harassment and plaintiff was warned that future acts such as this would result in more severe disciplinary action up to and including discharge. The fact that plaintiff admitted to making comments of a sexual nature after having been reprimanded in 1991 for similar conduct is enough to constitute just cause for termination of employment.[3]

Reviewing the evidence in a light most favorable to plaintiff, we find no question of fact as to whether plaintiff was discharged for violating defendant's sexual harassment policy. Therefore, the trial court did not err in finding that defendant had just cause to discharge plaintiff.[4]

Affirmed.

/s/ Michael J. Kelly
/s/ Kathleen Jansen
/s/ Helene N. White

[1] Defendant's motion for summary disposition was purportedly made pursuant to both MCR 2.116(C)(8) & (10). However, the record indicates that the motion was made pursuant to MCR 2.116(C)(10).

[2] Plaintiff testified, as follows, that he had no knowledge that the sexual harassment policy was not uniformly enforced against all employees:

> *Q.* Do you have any evidence that that rule, that you can't sexually harass customers and clients, is enforced any differently with respect to other employees?
>
> *A.* It pertains to all employees.
>
> *Q.* Good. And it's uniformly enforced, as far as you know?
>
> *A.* I don't know if it's enforced or not.
>
> *Q.* Okay. At least you don't have any evidence that anybody else was able to sexually harass employees and wasn't disciplined for it, isn't that right?
>
> *A.* I don't know of any other case.
>
> *Q.* Okay. Now you don't contend that you were terminated for any reason other than this incident involving Sandy, is that right?
>
> *A.* I don't know. I truthfully don't know.
>
> *Q.* Well, other than the incident involving Sandy?
>
> *A.* Mike Rush told me it was on account of that.
>
> *Q.* And you don't know any other reason, do you?
>
> *A.* No.

[3] Plaintiff claims that the collective bargaining agreement precluded consideration of the 1991 reprimand in imposing discipline because it occurred more than three years prior to the current incident. However, the 1991 reprimand is not being used to impose discipline, rather, it is used to show that plaintiff had knowledge of defendant's policy against sexual harassment and that making comments of a sexual nature or with a sexual connotation is not acceptable behavior at work.

[4] In light of this conclusion, we need not address plaintiff's claim that the circuit court erred in finding that plaintiff was an at-will employee when discharged.